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ATTORNEY GENERAL

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Capitol Center
1201 Main Street, Ste. 1000
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Dear Mr. Belton:

You have requested an opinion of this office regarding the definition of "good moral character" in S.C. Code Ann. § 38-43-100(F)(2).

LAW/ANALYSIS

Section 38-43-100(F) of the South Carolina Code, regarding "Insurance Producers and Agencies," states:

(F) A person applying for a resident insurance producer license or a person applying on behalf of the applicant shall make application to the director or his designee on the Uniform Application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the applicant's knowledge and belief. Before approving the application, the director or his designee shall find that the applicant:

(1) is at least eighteen years of age;

(2) is a person of good moral character and has not been convicted of a felony or any act within the last ten years that is a ground for denial, suspension, or revocation as provided for in Section 38-43-130 or been convicted of a misdemeanor involving dishonesty, breach of trust, or other financial- or insurance-related crime within five years . . .

S.C. Code Ann. § 38-43-100(F) (1976 Code, as amended) (emphasis added).

Pursuant to section 38-43-100(F)(2), the director or his designee must find that an applicant is a person of good moral character. This Office has stated that “[t]his requirement [of good moral character], of course, is common to most professions, e.g. lawyers, doctors, engineers, etc.” Op. S.C. Atty. Gen., 1979 WL 43489 (July 27, 1979). We explained the purpose of requiring a person to be of good moral character:

The basis for this requirement are several: the protection of the public from dishonest people; the relationship of the professional and his clients is normally of a confidential and serious nature and, therefore, not only skill but moral character is of great importance; and finally licensure is not a right but a privilege burdened with conditions While the requirement that an applicant demonstrate his ‘good moral character’ may not be a perfect method for insuring that dishonest people are not licensed as professionals, it is nevertheless one of few safeguards available . . .

Id.

A court has stated that “the Department [of Insurance] is charged with the duty of protecting insurance consumers by enforcing the licensing statutes enacted by the General Assembly.” Khiry Hakeem Brown, Petitioner, 2015 WL 2452881 at 2 (14-ALJ-09-0544-CC) (May 15, 2015). The court determined that “[b]y requiring a finding of good moral character, the General Assembly has mandated that the Department conduct a comprehensive inquiry into an applicant's character.” Id. South Carolina law does not explain what comprises a “comprehensive inquiry” into character.

Regarding the meaning of “good moral character,” our Office has opined:

Considering first the question, regarding a legal definition for ones being of ‘good moral character’ it can be said initially that there does not exist in the law any ordered listing of desirable personal traits and habits which can be said to have the sanction of law as representative of good moral character. Rather it is to be presumed that a person is of ‘good moral character’ until proved otherwise. Consequently, a more direct approach to the question is to ascertain what, from a legal standpoint, constitutes immoral character.

Op. S.C. Atty. Gen., 1974 WL 21247 (March 8, 1974).

In a 1969 opinion, we determined that “good moral character” is determined on the facts of each particular case:

‘[u]nless otherwise provided by statute or other legal regulation, there is no single and absolute criterion or standard, and the licensing authorities must judge whether the acts and conduct shown are sufficient in themselves or as an index to character to disqualify him.’

What constitutes good moral character in a given case, then, we cannot say for there is no single criterion in South Carolina by which to judge it; therefore, the Commission itself must determine in each instance whether one possesses it or not.

Op. S.C. Atty. Gen., 1969 WL 10708 (August 4, 1969) (citations omitted).

However, we added that to be of “good moral character,” an applicant must have the following traits:

We would advise, however, that while good moral character does not mean ‘moral excellence,’ it does mean that one must possess all of the elements essential to make up such a character, among those being common honesty and veracity [veracity].

Id (citations omitted).

Bad character can be shown by acts or conduct involving moral turpitude:

Decisions of the South Carolina courts generally define moral character by identifying those traits that represent a deficiency of moral character. The South Carolina Court recognizes that acts or conduct that involve moral turpitude imply the absence of good moral character and thus the absence of qualities which are required for positions of trust and confidence, such as the holding a liquor license. S.C. State Board of Dental Examiners v. Breeland, 208 S.C. 469, 38 S.E.2d 644 (1946); State v. Dean, 271 S.C. 413, 248 S.E.2d 263 (1978); Hughey v. Bradrick, 177 N.E. 911, (Oh.App.1931) (“... that what is moral is the antithesis of that which involves turpitude.”)

Moral turpitude has been defined by [the South Carolina Supreme] court as “an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the right and duty between man and man....” State v. Harris, 293 S.C. 75, 358 S.E.2d 713, 714 (1987), quoting

State v. Yates, 280 S.C. 29, 310 S.E.2d 805, 810 (1982). Moreover, if an act or conduct involves moral turpitude, the act or conduct constitutes something immoral in itself, regardless whether the act or conduct is punishable by law as a crime. State v. Dean, *supra*.

Op. S.C. Atty. Gen., 1989 WL 406179 (September 8, 1989).

A court has further explained that “[m]oral turpitude” is anything done contrary to justice, honesty, principle, or good morals and includes criminal acts which involve intentional dishonesty for purpose of personal gain.” Sjuanita Johnson., d/b/a Club Shays106 Dean Swamp Church Rd., Salley, Sc, Petitioner, 2003 WL 24004621 at 3 (02-ALJ-17-0530-CC) (Apr. 11, 2003) (quoting State v. Morris, 289 S.C. 294, 345 S.E.2d 477 (1986)). Moral turpitude is involved in acts containing deception and fraud. See Grover W. White, Jr., Petitioner, 1995 WL 930101 (95-ALJ-09-0569-CC) (Oct. 31, 1995); Latrisse B. Davis, d/b/a Midland Mkt., 2599 Midland Park Rd., N. Charleston, S.C., Petitioner, 2004 WL 3154787 (04-ALJ-17-0066-CC) (July 8, 2004). Some general examples of acts of moral turpitude are: providing false information to law enforcement; fraudulent check charges; breach of trust with fraudulent intent; perjury, and tax fraud.¹

Therefore, a “[c]onviction for a crime of moral turpitude is prima facie evidence of bad moral character.” S.C. Dep’t of Revenue & Taxation, Petitioner, 1996 WL 909574 at 3 (96-ALJ-17-0201-CC) (July 24, 1996). However, “[i]n evaluating an applicant's fitness, consideration must be given to the circumstances of any conviction record as well as to the extent to which rehabilitation has occurred.” *Id.*

In John A. Galloway, Petitioner, 2014 WL 2216467 (14-ALJ-09-0091-CC) (May 22, 2014), the court considered whether an application for an insurance producer’s license could be denied on the basis of bad character if the applicant had received a pardon for a conviction of a crime of moral turpitude. The applicant had been convicted of insurance fraud within the last ten years.² As a result of the conviction, his former producer, bail bondsman, and agency licenses had been revoked.

¹ See Chunks (A P’ship) 111 Branch St., Abbeville, S.C., Petitioner, 2003 WL 24004710 (03-ALJ-17-0103-CC) (June 27, 2003); Latrisse B. Davis, d/b/a Midland Mkt., 2599 Midland Park Rd., N. Charleston, S.C., Petitioner, 2004 WL 3154787 (04-ALJ-17-0066-CC) (July 8, 2004); Matter of Sipes, 297 S.C. 531, 377 S.E.2d 574 (1989); State v. Williamson, 65 S.C. 242, 43 S.E. 671 (1903); State v. Ball, 292 S.C. 71, 354 S.E.2d 906 (1987) (overruled on other grounds by, State v. Major, 301 S.C. 181, 391 S.E.2d 235 (1990)).

² Former section 38-43-100(F)(2) provided that the director or his designee must find that the applicant for a producer’s license is “a person of good moral character and has not been convicted of a felony or any crime involving moral turpitude within the last ten years that is a ground for denial, suspension, or revocation as provided for in Section 38-43-130 . . .” 2008 S.C. Acts 326. The language was changed to its current form by 2018 S.C. Acts 158. However, the change in language does not affect the court’s analysis.

The court found that the “pardoned conviction itself may not form the basis of a denial of the license.” Id at 3. The court reviewed the language of both the former version of section 38-43-100(F)(2) and section 38-43-130³ and determined:

The language of both Section 100(F) and Section 130(A) make it clear that evidence indicating the presence or absence of good moral character and history of fair dealing on the part of the applicant must be considered in determining his suitability to hold a producer's license irrespective of any conviction or pardon.

Id at 4.

The court concluded:

The license that Petitioner seeks is a license to sell insurance products Insurance fraud is an offense that directly involves the duties of an insurance producer and bail bondsman. The fact that Petitioner acknowledges committing that offense is compelling evidence that he lacks the requisite moral character to faithfully carry out the duties of a bail bondsman or insurance producer.

The Petitioner points out that he has received a pardon for the offense, and states that he attends church, has a family, and has had no other criminal convictions. I do not find the evidence presented

³ S.C. Code Ann. § 38-43-130 (1976 Code as amended) states:

(A) The director or his designee may place on probation, revoke, or suspend a producer's license after ten days' notice or refuse to issue or reissue a license when it appears that a producer has been convicted of a crime involving moral turpitude, has violated this title or any regulation promulgated by the department, or has wilfully deceived or dealt unjustly with the citizens of this State

(C) The words “deceived or dealt unjustly with the citizens of this State” include, but are not limited to, action or inaction by the producer as follows

(7) having admitted or been found to have committed any insurance unfair trade practice or fraud;

(8) using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere

in this case to be the type of compelling evidence of rehabilitation or mitigation that would be required to overcome Petitioner's history of fraudulent dealings in insurance matters. The Court is not convinced that Petitioner is "a person of good moral character," pursuant to S.C. Code Ann. § 38-43-100. I find that Petitioner has wilfully deceived and dealt unjustly in matters concerning insurance. Accordingly, I find that Galloway does not have the good moral character necessary to hold an insurance producer's license.

Id at 2.

In our 1969 opinion, we clarified that a license cannot be denied on the basis of prior bad conduct which is not relevant to the business:

[t]he Commission would not be justified in refusing a license simply upon a 'moral appraisal,' or either because previous misconduct which is not relevant to the conduct of the business for which the license is sought because of a remote conviction of a minor offense, or because of an unproved accusation of a crime.

Op. S.C. Atty. Gen., 1969 WL 10708, supra (citations omitted).

The Administrative Law Court has agreed:

Good moral character can be required [for a license to sell alcohol], as long as it has a rational connection to the applicant's fitness or capacity. An applicant's past conduct or criminal convictions may be considered in the decision whether or not to grant the license. However, a license may not be denied to an applicant on a moral appraisal, or for previous misconduct, which is not relevant to the conduct of the business for which a license is sought. Also, a license may not be needed [denied] on the grounds that the applicant has been convicted of a crime if the crime or acts which led to conviction are not related to the business, occupation, or profession for which application is made.

P.F. Chang's China Bistro, Inc., d/b/a P.F. Chang's China Bistro, Petitioner, 2016 WL 3035990 at 5 (16-ALJ-17-0083-CC) (May 23, 2016) (citations omitted).

CONCLUSION

In order to protect insurance consumers from dishonest people, the South Carolina Department of Insurance ("Department") must find that an applicant for a resident insurance producer license is "a person of good moral character" pursuant to S.C. Code Ann. § 38-43-100(F)(2). Because character is determined by the facts of each particular case, this Office cannot provide a set standard by which to judge if an applicant possesses good moral character.

However, we can provide some guidelines. The Department must consider evidence indicating the presence or absence of good moral character and fair dealing in determining suitability to hold a producer's license, regardless of a conviction or pardon. While it is presumed that an applicant is of good moral character, an applicant must possess honesty and veracity.

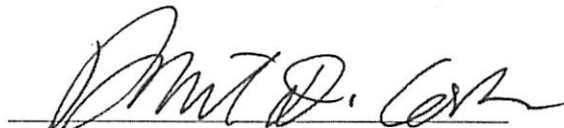
Bad character can be demonstrated by acts or conduct involving moral turpitude. Although a conviction of a crime of moral turpitude is prima facie evidence of bad character, the Department must consider the circumstances surrounding the conviction and the extent to which rehabilitation has occurred before denying a producer's license. Also, a license cannot be denied on the basis of prior bad conduct which is not relevant to the business. Ultimately, the Department must consider many factors to determine if an applicant is of "good moral character."

Sincerely,



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REVIEWED AND APPROVED BY:



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